

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2788 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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J. S. BAXI

Versus

STATE OF GUJARAT

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Appearance:

MR MD RANA for Petitioner

MS HARSHA DEVYANI for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/11/97

ORAL JUDGEMENT

1. The learned counsel for the petitioner at the outset of the hearing stated that the petitioner has expired on 19th January, 1992. An application to bring on record his heirs and legal representatives has been submitted in the Court on 13th April, 1992 but that has not been placed on the Board so far. A copy of the said application has been produced for the perusal of this Court. It is really a sorry state of affairs prevailing

in this Court that the civil application which has been filed in the year 1992 has not been scrutinised and placed on the Board for orders for all these years. However, the legal heirs mentioned in the said application are ordered to be brought on record of this special civil application as heirs and legal representatives of the deceased petitioner. The office is directed to make necessary correction in the cause title of the special civil application. As Shri Rana has put appearance for the impleaded petitioners i.e. the heirs and legal representatives of the deceased petitioners no notice is required to be issued to them.

2. The matter is taken up for final hearing. Heard the learned counsel for the parties.

3. This special civil application has come up for admission before this Court on 24th June, 1987 on which date, the Court ordered, "Rule to be heard with special civil application No.3534/85." The Special Civil Application No.3534/85 has already been decided by this Court on 14th August, 1996. In that special civil application, Shri Rana was the counsel for the petitioner therein.

4. The deceased petitioner has retired from the Government services on 1st December, 1976. After his retirement under the order dated 24th January, 1984 he was given the promotion on the post of Sub Treasury Officer Gr. I with effect from 29th October, 1971. The deceased petitioner after this order made a representation and claimed the deemed date of promotion from 1-5-1965. This date has been claimed on the ground that the deceased petitioner had completed 45 years of age on that date and he was not required to pass any examination for promotion. The recruitment by promotion to the post of Sub Treasury Officer Gr. I is regulated under the provisions published by notification dated 4th April, 1964. Rule-3 of the said rules relate to recruitment to the posts included in Group I and one of the modes of recruitment is by way of promotion of persons holding the posts in Group II who have passed the qualifying examination prescribed by the Government. The condition of passing of the Sub Treasury Account Services Examination is prescribed under the Gujarat Subordinate Accounts Service Departmental Examination Rules, 1964.

5. Rule 3 of these Rules provide that, 'no person shall be eligible for appointment to any of the Supervisory posts listed in statement-I to these Rules unless he has passed the departmental examination or has

been exempted from passing the same provided that the exemption will not be effective for further promotion and the officers will have to pass the examination before they can be considered for higher posts'.

6. Rule 4 of the said Rules provide that, 'a person who has continuously officiated for a period of five years or has been confirmed in any of the Supervisory posts referred to in Rule -3 above or has already attained the age of 45 years prior to the coming into force of these Rules will be exempted from passing the examination provided that the exemption will not be effective for any further promotion and the officers will have to pass the examination before they can be considered for the higher posts'.

7. A conjoint reading of these two provisions gives out that the exemption from passing of the departmental examination was of no effect for promotion to the higher posts. The petitioner has not disputed the fact that the Rules, 1964 came to be amended vide resolution dated 4th September, 1971 and that amendment has been made effective from 4-9-1971. Under this amendment, a rigor which has been put that the exemption granted to the employee in Supervisory cadre from passing of the departmental examination for promotion will have no relevancy for promotion to the higher posts has been deleted. So from 4-9-1971 the exemption has been granted from passing of the departmental examination on the ground that the concerned employee/officer has attained the age of 45 years and it will be taken to be an exemption also for promotion to the higher posts i.e. herein the post of Sub Treasury Officer, Gr. I. Earlier to 4-9-1971 no such provision was there. For promotion to the post of Sub Treasury Officer Gr. I, the petitioner has to pass the departmental examination which admittedly has not been passed by him and as such he was not given the promotion. When the Rules, 1964 have been amended from 4-9-1971 then the petitioner became eligible for promotion to the said post and as such the respondents have not committed any illegality whatsoever in giving him the promotion from 4-9-1971 in the cadre of Sub Treasury Officer Gr. I. The claim of the petitioner for deemed date of promotion from 1-5-1965 is wholly misconceived and cannot be allowed.

8. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated.

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